

In the Matter of Merchant Mariner's Document No. Z-116859-D3
Issued to: ADAM L. VAN LANDIGHAM

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ADAM L. VAN LANDINGHAM

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 4 January, 1952, an Examiner of the United States Coast Guard at Norfolk, Virginia, revoked Merchant Mariner's Document No. Z-116859-D3 issued to Adam L. Van Landingham upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Chief Steward on board the American SS JERRY S. FOLEY under authority of the document above described, on or about 6 April, 1948, while said vessel was in the port of Philadelphia, Pennsylvania, he unlawfully had in his possession one and a half pounds of marijuana which was not a part of the cargo or stores of said vessel.

Appellant had been given adequate notice by service of subpoena on 28 December, 1951, as to the time and place of the hearing as well as being informed that the hearing would proceed in his absence. When Appellant failed to put in an appearance at the designated time and place, the hearing was conducted in absentia and a plea of "not guilty" was entered to the charge and specification for the Appellant by the Examiner.

The Investigating Officer made his opening statement before introducing in evidence a copy of the subpoena served upon Appellant and a certified copy of the Judgment and Commitment against Appellant in the District Court of the United States for the Eastern District of Pennsylvania.

The Examiner announced his findings and concluded that the charge had been proved by proof of the specification and entered the order revoking Appellant's Merchant Mariner's Document No. Z-116859-D3 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that Appellant was not present at the hearing to defend himself; the arresting Custom's Officer could prove that the marijuana was not on board the ship while in Appellant's possession; Appellant has never sold, used or bought any kind of narcotic before or since this one time; and he has a wife and two children depending on him for support.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 6 April, 1948, Appellant was serving as Chief Steward on board the American SS JERRY S. FOLEY and acting under authority of his Merchant Mariner's Document No. Z-116859-D3 while the ship was at Philadelphia, Pennsylvania. On this date, he had in his possession aboard the ship one and a half pounds of marijuana which did not constitute part of the cargo entered in the manifest or part of said vessel's stores. Such possession was a violation of Title 21 U.S.C. 184a.

On 19 April, 1948, Appellant was tried and convicted of this offense in the District Court of the United States for the Eastern District of Pennsylvania. He was represented by counsel and entered a plea of guilty. Appellant was sentenced to imprisonment for a period of 18 months but sentence was suspended and he was placed upon probation for a period of two years.

OPINION

Appellant received timely notice of the hearing and his failure to appear in his defense was through his own fault. In addition, Appellant was given an opportunity in the Federal court to make out a defense to the same offense with which he is charged here. Appellant was convicted in the Federal court and that judgment of conviction is res judicata and conclusive in these proceedings. 46 C.F.R. 137.15-5.

Narcotics offenses of any nature are considered to be too great a threat to the safety of lives and ships to impose any order short of revocation; or to take the chance that a proven offender will not again become associated with narcotics aboard American merchant marine vessels. Hence, the order of the Examiner must be sustained despite the consequent hardship to Appellant and his family.

ORDER

The Order of the Examiner dated 4 January, 1952, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 23rd day of April, 1952.